

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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North Shore Gas Company	:	
and The Peoples Gas Light and Coke	:	
Company	:	<b>Docket No. 12-0273</b>
	:	
Petition to Review Affiliate	:	
Interactions with Peoples Energy	:	
Home Services, pursuant to January	:	
10, 2012 Rate Order.	:	
	:	<b>(Cons.)</b>
	:	
Illinois Commerce Commission	:	
On Its Own Motion	:	
vs.	:	
North Shore Gas Company and the	:	
Peoples Gas Light and Coke	:	
Company	:	<b>Docket No. 13-0612</b>
	:	
Investigation into Interactions with	:	
Affiliates.	:	

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**BRIEF ON EXCEPTIONS OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission’s (“Commission”), respectfully submits this Brief on Exceptions to the Proposed Order issued by the Administrative Law Judge (“ALJ”) on June 30, 2015 (“Proposed Order”, “PO” or “ALJPO”).

**I. INTRODUCTION**

Initial Briefs (“IB”) and Reply Briefs (“RB”) were filed on May 28, 2015 and June 12, 2015, respectively by Staff, and jointly by North Shore Gas Company (“North Shore”) and

The Peoples Gas Light and Coke Company (“Peoples Gas”) (jointly, “the Companies” or “Gas Companies”). Although Staff supports many of the PO’s conclusions, there are two to which Staff takes exception as set forth below.

## II. ARGUMENT AND EXCEPTIONS

### A. Pinnacle / Integrys Transportation Fuels

#### Argument

The ALJPO errs in its conclusion regarding Section 5-202.1 of the Illinois Public Utilities Act (“Act”). Staff in its direct testimony raised three assertions of misrepresentations of fact by the Companies. The first two dealt with the actions of Mr. Calvin and the last dealt with whether Peoples Gas expedited its contract process. The ALJPO correctly finds that the Companies on two occasions, in responses to data requests contradicted other responses.

The Commission agrees with many of Staff’s concerns regarding contradictions in responses to data requests. For instance, the Gas Companies state at one point that Peoples Gas and Integrys personnel working on the contract with Pinnacle had no knowledge of the acquisition of Pinnacle and Trillium by Integrys. **Yet Staff points to various other responses to data requests that indicate otherwise.** Moreover, Staff points to evidence indicating that certain measures were taken during contract negotiations with Pinnacle on the CNG station to expedite Integrys’ acquisition of Pinnacle, despite the Gas Companies’ continued assertions that the two matters were unrelated.

(ALJPO, 15.) (emphasis added)

However, after making these correct findings of fact, that ALJPO does not find that these contradictions were misrepresentations in violation of the Act.

However, from the evidence provided in this proceeding, at this time the Commission does not find there was a clear violation of Section 5/5-202.1 of

the Act, which relates to penalties for knowingly misrepresenting facts. The Commission further notes, while Staff mentions the Gas Companies “appear” to have violated Section 5/5-202.1 of the Act, Staff does not seek to assess any monetary penalties pursuant to the Act.

(Id.)

It is unclear what leads to this inconsistency between the facts found by the ALJPO and the ALJPO’s conclusion. Quite possibly it was because Staff indicated that it “appeared” and did not seek penalties against the Companies. Peoples Gas surely knew what questions were asked and what facts were misrepresented. In both cases, the impact of this misrepresentation of facts (if successful) would be to impede Staff’s investigation.

The Companies protest in their Reply Brief that, “Staff’s conclusions that the Gas Companies misrepresented the facts (see, e.g., Staff IB at 19) is based, in part, on a selective reading of data responses.” (Companies RB, 5.) The Companies then attempt to provide two examples that purportedly support those claims. Staff raised this issue of misrepresentation in its direct testimony. (Staff Ex. 1.0 at 51-54 and 61-63) At no time did any witness address this “selective reading of data responses” on the record despite two opportunities to do so. Furthermore, the Companies only provided refutation of these charges in their Reply Brief.

Moreover, at no time in testimony or briefs did the Companies address or refute the charge by Staff about the expediting of the Pinnacle contract approval process. That remains unrefuted. A plain reading of the responses to the DRs in the record leads to the conclusion that Peoples Gas knowingly misrepresented the fact that it had expedited the Pinnacle construction contract process to have it approved before the acquisition.

Peoples Gas knowingly provided discovery that contradicted other provided documents. Staff asked the following question twice and both times received an inaccurate response. “Did Peoples Gas, its agents or affiliates accelerate or **expedite** the review or approval of Pinnacle in order to allow the Pinnacle contract to get signed before the acquisition?” Peoples Gas twice responded, “**No**. Efforts to complete the RFP process were in response to the upcoming deadline set forth in the grant agreement.” However, an internal document provided during discovery stated that, “In an effort to **expedite** the purchase of Pinnacle CNG by Integrys Energy Group, a final price was not determined for un-priced line items, instead an "allowance" was made for the unpriced line items.” Because Staff’s questions used the same word “expedite” as the response, there can be no quibbling about terms. While the grant was certainly a factor in the decision to build that station and the timing, it is another thing altogether to claim that it was the sole factor as the Companies do in their response to Staff DR DAS-18.03(a). (Staff Exhibit 1.0 (Rev.) (Public), Attach. AB.).

Finally, the fact that Staff chose not to recommend a fine in no way makes the violations any less certain.

#### Proposed Modification

(ALJPO, 5-9)

#### **Staff’s Position**

\* \* \*

The second known instance of knowing misrepresentation of facts, Staff continues, is related to the later part of the process of awarding the contract. Staff asked the Gas Companies whether they or any agent or affiliate had expedited the contract process. The Gas Companies insisted that there was no rush to have the contract approved before

the acquisition was executed. *Id.*, Attach. Q, Companies Response to Staff DR Docket No. 12-0299 DAS-7.02(g). They also insist that neither they nor their affiliates expedited the approval of this contract to allow the acquisition to occur.

a. Did Peoples Gas, its agents or affiliates accelerate or expedite the review or approval of Pinnacle in order to allow the Pinnacle contract to get signed before the acquisition?

a. No. Efforts to complete the RFP process were in response to the upcoming deadline set forth in the grant agreement. (Staff Exhibit 1.0 (Rev.) (Public), Attach. AB, Companies Supplemental Response to Staff DR DAS-18.03(a). (emphasis added))<sup>1</sup>

Staff states that an internal document called the Project Change Request form was provided in discovery. Mr. Radtke, the project sponsor authorized the payment of the change order requested by Pinnacle through Mr. Krueger, one of the co-project managers along with Mr. Wyrick. *Id.*, Attach. AC, Attachment 2 to the third supplemental response to Staff DR DAS-10.12. This form included the description of the project and the Change Orders to be approved, stating that:

During the course of contract negotiations, several scoped line items were un-priced by Pinnacle. In an effort to expedite the purchase of Pinnacle CNG by Integrys Energy Group, a final price was not determined for un-priced line items, instead an "allowance" was made for the unpriced line items.

*Id.* (emphasis added). Thus, Staff concludes, the acquisition process was not only connected to the construction project, the acquisition was dependent upon the construction process approval and there was pressure to get the construction project approved rapidly so that the acquisition could go through. Mr. Krueger, one of the project managers, submitted the Bid Evaluation / Recommendation to a group that included Mr. Radtke and Mr. Calvin. Staff Ex. 1.0 Rev. (Public) at 61-62, Attach. AD, Attachment to Companies Response Staff DR DAS-26.04. Staff argues that, as the Project Change Request shows, these individuals knew that the construction and acquisition processes were linked, that the construction contract process had been expedited and that corners had been cut to get the construction contract signed before acquisition. *Id.* at 63, Attach. AD, Attachment to Companies Response Staff DR DAS-26.04.

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<sup>1</sup> Staff witness Sackett rejected this assertion. The grant agreement between GTI and Peoples Gas was not even signed and the deadline on the grant agreement between the City and GTI was for 21 Dec 2012, more than 15 months distant. (Staff Exhibit 1.0 (Rev.) (Public), 58-59.)

Proposed Modification  
(ALJPO, 14-15)

### **3. Commission Analysis & Conclusion**

Section 7-101 of the Act requires that all contracts between public utilities and affiliated interests must be approved by the Commission to be effective. The Gas Companies argue that Section 7-101 of the Act does not raise any issues under or apply to its transactions with Pinnacle regarding the construction of the CNG station because the agreement was entered into prior to becoming affiliates. The Gas Companies are correct in that any transactions or agreements with Pinnacle occurring before Pinnacle and the Gas Companies became affiliates do not fall within Section 7-101. Nevertheless, as soon as Pinnacle became an affiliate of the Gas Companies, Section 7-101 became relevant.

As the Commission noted in Docket No. 01-0607, Section 7-101 does not specifically address contracts entered into prior to companies becoming affiliates. However, the fact that Peoples Gas and Pinnacle entered into a contract prior to becoming affiliates does not negate the Commission's authority under Section 7-101 to review all non-exempt affiliated interest contracts.

As the Gas Companies note, Staff appears to argue that upon becoming affiliates, any pre-existing contracts are void *ab initio*. The Commission agrees with Staff that it is a violation of the Act for utilities to interact with affiliates under agreements not approved by the Commission or otherwise exempt. However, it is realistic, as the current proceeding shows, that there may be contracts between companies in existence prior to becoming affiliates. Accordingly, a reasonable interpretation of Section 7-101 would require that, upon becoming an affiliate with Pinnacle, Peoples Gas should have promptly filed with the Commission a petition seeking review of any non-exempt contracts it has with its new affiliate. Accordingly, the Commission finds that because Peoples Gas continued to transact with Pinnacle pursuant to an agreement that was not approved by the Commission without taking reasonable measures to come into compliance with Section 7-101, Peoples Gas did violate the Act.

Another issue raised by Staff relates to the alleged misrepresentation of facts by the Gas Companies. Staff argues that: (1) the Gas Companies misrepresented facts regarding the knowledge of the acquisitions by those developing the bid list for the CNG station; (2) Integrys personnel provided false statements to the Integrys Internal Audit Services; and (3) the Gas Companies misrepresented facts by insisting that neither Peoples Gas nor its affiliates or agents expedited the Pinnacle process. The Gas Companies argue that Staff's allegations are based on a selective reading of the data responses.



The Commission agrees with ~~many of~~ Staff's concerns regarding contradictions in responses to data requests. For instance, the Gas Companies state at one point that Peoples Gas and Integrys personnel working on the contract with Pinnacle had no knowledge of the acquisition of Pinnacle and Trillium by Integrys. Yet Staff points to various other responses to data requests that indicate otherwise. Moreover, Staff points to evidence indicating that certain measures were taken during contract negotiations with Pinnacle on the CNG station to expedite Integrys' acquisition of Pinnacle, despite the Gas Companies' continued assertions that the two matters were unrelated.

Staff further takes issue with the Gas Companies' characterization of the agreement between Peoples Gas and Pinnacle as an "arm's length agreement," and provides record evidence indicating that there was clear influence. It is unclear what an "arm's length agreement" entails. Nevertheless, the Commission finds that Staff provided sufficient evidence to indicate there were closer interactions and influence between Pinnacle and Peoples Gas than the Gas Companies would have the Commission believe. ~~However, from~~ Based on the evidence provided in this proceeding, ~~at this time~~ the Commission ~~does not find~~ there were ~~as a~~ two clear violations of Section 5/5-202.1 of the Act, which relates to penalties for knowingly misrepresenting facts related to the overlap of the groups involved in developing the PFR bid lists and also expediting of the construction contract as mentioned above. The Commission further notes, while Staff ~~does not seek to assess any monetary penalties pursuant to the Act.~~ mentions the Gas Companies "appear" to have violated Section 5/5-202.1 of the Act, the Gas Companies clearly have violated Section 5/5-202.1 of the Act.

Staff raises another issue regarding services provided by ITF, which is the parent company of Pinnacle. As the record shows, ITF began providing operational support services for the CNG Station that Pinnacle constructed in April 2012. Staff and the Gas Companies agree that ITF provided services under the STA (and later the Master AIA). However, Staff points out, and the Gas Companies admit, that Peoples Gas did not timely notify the Commission that ITF was added to the STA as required by the STA. Accordingly, Peoples Gas was in violation of the STA.

Staff also states that when the Master AIA went into effect, the Gas Companies could only provide and receive "Incidental Services" from their non-regulated affiliates. Staff argues that the services provided to Peoples Gas from ITF were not incidental under the current definition of incidental services because they represented 100% of ITF's intercompany provided services. The Gas Companies argue that the total amount of ITF's services was only \$35,547.57, and thus is insignificant. The Commission finds that the revised definition of Incidental Services, as agreed to by Staff and the Gas Companies in the proposed rider (Appendix A of this Order), is reasonable and will clarify what services are incidental services.

**B. PEHS**

Argument

The ALJPO errs in its analysis of Section 550.20 of the Commission's Rules and Section 8-101 of the PUA. The ALJPO states that the provision of repair services to customer-owned piping was a "non-tariff service," the Gas Companies were "not required to provide any repair services to customer-owned piping," and the Gas Companies' customers were not "entitled to receive such services from the Gas Companies." (ALJPO, 24.) The ALJPO then concludes that Section 550.20 only applies to "tariffed services," and Section 8-101 only applies to services customers are reasonably entitled to. Id. The ALJPO fails to recognize that Section 550.20 not only applies to "tariffed services" but also applies to services provided in connection with tariffs services. Services under the Act,

is used in its broadest and most inclusive sense, and includes not only the use or accommodation afforded consumers or patrons, but also any product or commodity furnished by any public utility and the plant, equipment, apparatus, appliances, property and facilities employed by, or in connection with, any public utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public.

(220 ILCS 5/3-113.) (emphasis added) It is clear that under the Commission's rules "Gas utilities shall not provide affiliated interests or customers of affiliated interests preferential treatment or advantages relative to unaffiliated entities or their customers in connection with services provided under tariffs on file with the Illinois Commerce Commission....This provision applies broadly to all aspects of service, including, but not limited to, responsiveness to requests for service, the availability of firm versus interruptible services, the imposition of special metering requirements, and all terms and conditions and charges

specified in the tariff.” 83 Ill. Admin. Code 550.20(a) (emphasis added). The provision of repair services to customer-owned piping is a service provided in connection with tarified delivery services. Once the Gas Companies decided to provide that non-tarified service to its affiliate, Peoples Energy Home Services’ (“PEHS”) customers, the Gas Companies’ customers were entitled to receive the same service from the Gas Companies. By not providing firm repair services to customer-owned piping to all of the Gas Companies’ customers but only to a select group, i.e. customers of the affiliate PEHS, the Gas Companies provided preferential treatment to an affiliate violating Part 550.20 and Sections 9-241 and 8-101 of the Act. Based upon the above, Staff recommends the following modifications to the ALJPO.

#### Proposed Modification

(ALJPO, 23-24)

The Commission finds that the Gas Companies ~~did not discriminate~~ against ratepayers contrary to as contemplated in Section 8-101 of the Act and Section 9-241 of the Act and the Commission’s rules (83 Ill. Admin. Code § 550.20) as Staff asserts regarding the PPP services provided through the Gas Companies’ affiliate PEHS. ~~While, t~~The Gas Companies are correct that the specific services provided were non-tariff services, and that normally the Gas Companies are not required to provide any repair services to customer-owned piping, nor are customers normally entitled to receive such service from the Gas Companies, the Gas Companies fail to recognize the significance of the Gas Companies’ decision to provide firm repair services to customer-owned piping to its affiliate, PEHS’ customers. Section 550.20 of the Commission’s rules specifically addresses non-discrimination “in connection with services provided under tariffs.” 83 Ill. Admin. Code § 550.20(a). Discrimination is not just prohibited with respect to services provided under tariffs on file with the Commission but also with respect to services provided “in connection with” services provided under tariffs on file with the Commission. The provision of firm repair service to customer-owned piping is clearly a service provided in connection with the Gas Companies’ delivery of gas, a tarified service. ~~Similarly,~~ Section 8-101 of the Act addresses services that

customers are “reasonably entitled thereto,” which must be provided on a non-discriminatory basis. 220 ILCS 5/8-101. Since the Gas Companies chose to provide firm repair service to customer-owned piping for the affiliate PEHS’s customers, the Gas Companies’ customers were ~~cannot reasonably be then entitled to receive~~ entitled to have the Gas Companies firm repair service for their customer-owned piping since that was a service provided in connection with a tariffed service. By not providing that service to all of its customers and only to its affiliate’s customers, the Gas Companies violated Section 8-101 and Section 9-241 of the Act does not apply and Section 550.20 of the Commission’s Rules.

Staff further argues that the Gas Companies violated the Act by billing charges below cost by not increasing those charges when the postage rates increased. The Gas Companies do not contest that the billing charges were not increased until the issue was raised by Staff in the 2011 Rate Cases. Accordingly, the Commission agrees with Staff that costs that should have been borne by PEHS were instead covered by ratepayers. Staff correctly points out that the Gas Companies were in violation of the ISA/STA by not recovering reasonable costs for services.

Another issue raised by Staff is regarding the solicitation services provided by IBS. The Gas Companies agree with Staff that IBS did not go back and charge PEHS for actual solicitation services for 2008-2010. Accordingly, Staff is correct that ratepayers subsidized services provided to PEHS through IBS. The Commission finds that this was a violation of the IBS-Reg AIA.

### **III. CONCLUSION**

Staff respectfully requests that the Illinois Commerce Commission approve Staff’s recommendations in this docket.

Respectfully submitted,

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